

Article 13D.

Preneed Funeral Funds.

§ 90-210.60. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Board" means the North Carolina Board of Funeral Service as created pursuant to Article 13A of Chapter 90 of the General Statutes;
- (2) "Financial institution" means a bank, credit union, trust company, savings bank, or savings and loan association authorized by law to do business in this State;
- (3) "Insurance company" means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;
- (3a) "Legal representative" means the person authorized by G.S. 130A-420 who would be otherwise authorized to dispose of the remains of the preneed funeral contract beneficiary.
- (4) "Prearrangement insurance policy" means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured or annuitant being the person for whose service the funds were paid;
- (5) "Preneed funeral contract" means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;
- (6) "Preneed funeral contract beneficiary" means the person upon whose death the preneed funeral contract will be performed; this person may also be the purchaser of the preneed funeral contract;
- (7) "Preneed funeral funds" means all payments of cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of cemetery lots, crypts, niches, and mausoleums, which have for a purpose or which by operation provide for the furnishing or performance of funeral or burial services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition

- of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, or the providing of the proceeds of any insurance policy for such use;
- (8) "Preneed funeral planning" means offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise;
 - (9) "Preneed licensee" means a funeral establishment which has applied for and has been granted a license to sell preneed funeral contracts under the Article. Such license is also referred to in this Article as a "preneed funeral establishment license." (1969, c. 187, s. 1; 1983, c. 657, s. 1; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 553, s. 27; 1997-399, s. 23; 2001-294, ss. 7, 8; 2003-420, s. 1; 2007-531, s. 7.1; 2010-96, s. 38; 2010-102, s. 6; 2010-191, s. 3.)

§ 90-210.61. Deposit or application of preneed funeral funds.

(a) Preneed funeral funds are subject to the provisions of this Article and shall be deposited or applied as follows:

- (1) If the preneed funeral contract purchaser chooses to fund the preneed funeral contract by a trust deposit or deposits, the preneed licensee shall deposit all funds in an insured account in a financial institution, in trust, in the preneed licensee's name as trustee within five business days. The preneed licensee, at the time of making the deposit as trustee, shall furnish to the financial institution the name of each preneed funeral contract purchaser and the amount of payment on each for which the deposit is being made. The preneed licensee may establish an individual trust fund for each preneed funeral contract or a common trust fund for all preneed funeral contracts. The trust accounts shall be carried in the name of the preneed licensee as trustee, but accounting records shall be maintained for each individual preneed funeral contract purchaser showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned. Except as provided in this Article, all interest, dividends, increases, or accretions earned by the funds shall remain with the principal. The trust fund may be charged with applicable taxes and for reasonable charges paid by the trustee to itself or others for the preparation of fiduciary tax returns. Penalties charged by a financial institution for early withdrawals caused by a transfer pursuant to G.S. 90-210.63 shall be paid by the preneed licensee. Penalties charged as a result of other early withdrawals as permitted by this Article shall be paid from the trust fund, and the financial institution shall give the preneed funeral contract purchaser prompt notice of these penalties.
- (2) Notwithstanding any other provision of law, if a preneed funeral contract is funded by a trust deposit or trust deposits, a preneed licensee may retain, free of the trust, up to ten percent (10%) of any payments made on a preneed funeral contract, provided that the preneed licensee fully discloses in writing in advance to the preneed funeral contract purchaser the percentage of the payments to be retained. If there is no substitution pursuant to G.S. 90-210.63(a), the preneed licensee shall give credit for the amount retained

upon the death of the preneed funeral contract beneficiary and performance of the preneed funeral contract.

- (3) If the preneed funeral contract purchaser chooses to fund the contract by a prearrangement insurance policy, the preneed licensee shall apply all funds received for this purpose to the purchase of the prearrangement insurance policy within five business days. The preneed licensee shall notify the insurance company of the name of each preneed funeral contract purchaser and the amount of each payment when the prearrangement insurance policy or policies are purchased.

(b) Except as provided by this Article or by the preneed funeral contract, all payments made by the purchaser of a preneed funeral contract or prearrangement insurance policy shall remain trust funds within a financial institution or as paid insurance premiums with an insurance company, as the case may be, until the death of the preneed funeral contract beneficiary and until full performance of the preneed funeral contract.

(c) Each preneed licensee may establish and maintain with a financial institution of its choice, a preneed funeral fund clearing account. Preneed funeral funds received by a preneed licensee may be deposited and held in such an account until disbursed by the preneed licensee to fund a preneed funeral contract pursuant to subdivisions (a)(1) or (a)(3) of this section. This account shall be used solely for the receipt and disbursement of preneed funeral funds.

(d) Funds deposited in trust under a revocable standard preneed funeral contract may, with the written permission of the preneed funeral contract purchaser, be withdrawn by the trustee and used to purchase a prearrangement insurance policy. Except as provided in this subsection, no funds deposited in trust in a financial institution pursuant to this Article shall be withdrawn by the trustee to purchase a prearrangement insurance policy.

(e) Except as provided by G.S. 90-210.61(c), at no time before making a deposit or purchasing a prearrangement insurance policy may a preneed licensee, or its agents or employees, deposit in its own account or the account of any other person any monies coming into its hands for the purpose of purchasing services, merchandise, or prearrangement insurance policies under the provisions of this Article. (1969, c. 187, ss. 2, 4; 1981 (Reg. Sess., 1982), c. 1336, s. 1; 1983, c. 657, ss. 2, 4; 1985, c. 12, ss. 1-3; 1987, c. 430, ss. 15, 16; c. 879, s. 6.2; 1989, c. 485, s. 16; c. 738, s. 2; 1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.62. Types of preneed funeral contracts; forms.

(a) A preneed licensee may offer standard preneed funeral contracts and inflation-proof preneed funeral contracts. A standard preneed funeral contract applies the trust funds or insurance proceeds to the purchase price of funeral services and merchandise at the time of death of the contract beneficiary without protection against potential future price increases. An inflation-proof contract establishes an agreement between the preneed licensee and the purchaser for funeral services and merchandise without regard to potential future price increases. Upon written disclosure to the purchaser of a preneed funeral contract, inflation-proof contracts may permit the preneed licensee to retain all of the preneed funeral contract trust funds on deposit, and all insurance proceeds, even those in excess of the retail cost of goods and services provided, when the preneed licensee has fully performed the preneed funeral contract. Preneed funeral contracts may be revocable or irrevocable, at the option of the preneed funeral contract purchaser.

(b) The Board may prescribe forms for preneed funeral contracts consistent with this Article. All contracts must be in writing on forms prescribed by the Board. Any use or attempted use of any oral preneed funeral contract or any written contract in a form not prescribed by the Board shall be deemed a violation of this Article. (1991 (Reg. Sess., 1992), c. 901, s. 2; 2007-531, s. 8.)

§ 90-210.63. Substitution of licensee.

(a) If the preneed funeral contract is irrevocable, the preneed funeral contract purchaser, or after his death the preneed funeral contract beneficiary or his legal representative, upon written notice to the financial institution or insurance company and the preneed licensee who is a party to the preneed funeral contract, may direct the substitution of a different funeral establishment to furnish funeral services and merchandise.

(1) If the substitution is made after the death of the preneed funeral contract beneficiary, a funeral establishment providing any funeral services or merchandise need not be a preneed licensee under this Article to receive payment for such services or merchandise. The original contracting preneed licensee shall be entitled to payment for any services or merchandise provided pursuant to G.S. 90-210.65(d). If the substitution is made before the death of the preneed funeral contract beneficiary, the substitution must be to a preneed licensee. If the preneed funeral contract is funded by a trust deposit or deposits, the financial institution shall immediately pay the funds held to the original contracting preneed licensee.

(2) The original contracting preneed licensee shall immediately pay all funds received to the successor funeral establishment designated. Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon.

(3) If the preneed funeral contract is funded by a prearrangement insurance policy, the insurance company shall not pay any of the funds until the death of the preneed funeral contract beneficiary, and the insurance company shall pay the funds in accordance with the terms of the policy.

(b) The person giving notice of the substitution of a preneed licensee and the successor preneed licensee shall enter into a new preneed funeral contract for the funds transferred, and this Article shall apply, including the duty of the successor preneed licensee to deposit all of the funds in a financial institution if the death of the preneed funeral contract beneficiary has not occurred. Nothing in this subsection shall be construed to permit the use of the transferred funds to purchase a prearrangement insurance policy, nor to permit an irrevocable preneed funeral contract to be made revocable or to result in the payment of any of the transferred funds to the preneed funeral contract purchaser or to the preneed funeral contract beneficiary or his estate, except as provided by G.S. 90-210.64(b). (1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 242, s. 1; 1997-399, s. 24; 2003-420, s. 11.)

§ 90-210.63A. Amendment of preneed funeral contracts.

(a) Unless otherwise provided by this Article, preneed funeral contracts may be modified by mutual consent of the contracting preneed funeral establishment and the preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative.

(b) When the preneed contract purchaser and preneed contract beneficiary are the same, the preneed contract purchaser may designate one or more individuals to change the arrangements or performing funeral establishment, or may designate that the arrangements or performing funeral establishment may not be changed without an order from the clerk of superior court in the county where probate proceedings are instituted upon a finding that the change is in the best interest of the estate.

(c) If the preneed purchaser, or after his or her death, the preneed contract beneficiary or his or her legal representative, and the contracting preneed funeral establishment agree to modify any goods or services selected under an inflation-proof contract, the preneed licensee shall not be required to guarantee the price of the modified goods and services at the time of death and all other funeral goods and service selected shall remain guaranteed. If the modifications increase the purchase price, the provisions of G.S. 90-210.64(b) shall apply as if the modified contract had been executed on the original date. If the modifications decrease the purchase price, the preneed licensee shall refund all monies according to the provisions of G.S. 90-210.64(d). (2007-531, s. 9.)

§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall file a copy of the certificate of performance or other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral contract except as required by G.S. 90-210.63A(c).

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed

licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one hundred dollars (\$100.00) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars (\$100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

- (1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.
- (2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.
- (3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust account funds must be filed with the Board by the contracting licensee. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 25; 2001-294, s. 9; 2003-420, s. 12; 2007-531, s. 10.)

§ 90-210.65. Refund of preneed funeral funds.

(a) Within 30 days of receipt of a written request from the purchaser of a revocable preneed funeral contract who has trust funds deposited with a financial institution pursuant to G.S. 90-210.61(a), the financial institution shall refund to the preneed funeral contract purchaser the entire amount held by the financial institution.

(b) Within 30 days of receipt of a written notice of cancellation of any prearrangement insurance policy purchased pursuant to G.S. 90-210.61(a)(3), the issuing insurance company shall pay such amounts to such person or persons as is provided under the terms of the prearrangement insurance policy.

(c) After making refund pursuant to this section and giving notice of the refund to the preneed licensee, the financial institution or insurance company shall be relieved from all further liability.

(d) Notwithstanding any other provision of this Article, if a preneed funeral contract is revoked or transferred following the death of the preneed funeral contract beneficiary, the purchaser of the preneed funeral contract may be charged according to the contracting preneed licensee's price lists for any services performed or merchandise provided prior to revocation or transfer.

(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may only be revoked or any proceeds refunded by the order of a court of competent jurisdiction, except as follows:

- (1) The Board may order an irrevocable contract revoked when the preneed contract beneficiary is no longer domiciled in this State and has submitted a written copy to the Board of a new preneed funeral contract executed under

the laws of the state where the preneed contract beneficiary is domiciled. Upon receipt of the Board's order, the original contracting preneed licensee shall immediately follow the provisions of G.S. 90-210.63 to transfer the funds to the successor firm.

- (2) Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract. (1969, c. 187, s. 3; 1981 (Reg. Sess., 1982), c. 1336, s. 2; 1983, c. 657, s. 3; 1985, c. 12, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 2; 2003-420, s. 13; 2007-531, s. 11.)

§ 90-210.66. Recovery fund.

(a) There is established the Preneed Recovery Fund. The Fund shall be administered by the Board. The purpose of the Fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of any licensee under this Article, and includes refunds due a preneed funeral contract beneficiary from a preneed licensee who has retained any portion of the preneed funeral contract payments pursuant to G.S. 90-210.61(a)(2).

(b) From the fee for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars (\$2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve.

(c) All sums received by the Board pursuant to this section shall be held in a separate account known as the Preneed Recovery Fund. Deposits to and disbursements from the Fund account shall be subject to rules established by the Board.

(d) The Board shall adopt rules governing management of the Fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(e) The Board may expend monies in the Fund for the following purposes:

- (1) To make reimbursements on approved applications;
- (2) To purchase insurance to cover losses as deemed appropriate by the Board and not inconsistent with the purposes of the Fund;
- (3) To invest such portions of the Fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under State law; and
- (4) To pay the expenses of the Board for administering the Fund, including employment of legal counsel to prosecute subrogation claims.

(f) Reimbursements from the Fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected or reimbursed and only after the applicant has complied with all applicable rules of the Board.

(g) The Board shall investigate all applications made and may reject or allow such claims in whole or in part to the extent that monies are available in the Fund. The Board shall have complete discretion to determine the order and manner of payment of approved applications. All payments shall be a matter of privilege and not of right, and no person shall have any right in the Fund as a third-party beneficiary or otherwise. No attorney may be compensated by the Board for prosecuting an application for reimbursement.

(h) In the event reimbursement is made to an applicant under this section, the Board shall be subrogated in the reimbursed amount and may bring any action it deems advisable against any person, including a preneed licensee. The Board may enforce any claims it may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants and any other persons it deems appropriate.

(i) The Fund shall apply to losses arising after July 9, 1992, regardless of the date of the underlying preneed funeral contract. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 26.)

§ 90-210.67. Application for license.

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. Notwithstanding any other provision of law, any person who offers to sell or sells a casket, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of in the casket, shall first comply with the provisions of this Article. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act [Session Laws 1991 (Reg. Sess., 1992), c. 901, s. 2]. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than four hundred dollars (\$400.00). The Board shall set the amounts of the application fees and renewal fees, by rule. A funeral establishment receiving a new preneed establishment license after January 1, 2008, or whose preneed establishment license has lapsed or was terminated for any reason after January 1, 2008, shall obtain a surety bond in an amount not less than fifty thousand dollars (\$50,000) for five years, or upon demonstrating that it is solvent, no less than one year from the date the original license is

issued. The Board may extend the bonding requirement in the event there is a claim paid from the bond.

If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and each preneed funeral establishment licensee shall pay annually to the Board on or before that date a license renewal fee of not more than two hundred fifty dollars (\$250.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars (\$100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars (\$50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars (\$50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and each preneed sales licensee shall pay annually to the Board on or before that date a license renewal fee of not more than fifty dollars (\$50.00). On or before the first day of February, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than twenty-five dollars (\$25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee not to exceed twenty dollars (\$20.00) for each sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars (\$25.00) for each late filing and payment. The fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars (\$25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars (\$150.00) for the late filing of an annual report.

(e), (f). Repealed by Session Laws 2003-420, s. 14, effective October 1, 2003. (1969, c. 187, s. 5; 1981, c. 671, ss. 16, 17; 1983, c. 657, s. 4; 1985, c. 12, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1995 (Reg. Sess., 1996), c. 665, s. 1; 1997-399, s. 27; 2001-294, s. 10; 2003-420, s. 14; 2007-531, s. 12.)

§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the

contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars (\$100.00). The Board may require the attendance of and examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

Financial institutions that accept preneed funeral trust funds and insurance companies that assign policy proceeds or designate a preneed funeral establishment as beneficiary shall also forward an account balance to the contracting preneed funeral establishment at the end of each calendar year.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that neither the substitute preneed licensee or

preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative, shall be obligated to perform the agreement without executing a new preneed funeral contract. Any lapse or transfer of a preneed contract pursuant to this section shall not be grounds to revoke an irrevocable preneed funeral contract.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee. (1969, c. 187, s. 6; 1983, c. 657, ss. 4, 5; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 164, s. 3; 1997-399, s. 28; 2007-531, ss. 13, 14.)

§ 90-210.69. Rulemaking; enforcement of Article; judicial review; determination of penalty amount.

(a) The Board is authorized to adopt rules for the carrying out and enforcement of the provisions of this Article. The Board may perform such other acts and exercise such other powers and duties as are authorized by this Article and by Article 13A of this Chapter to carry out its powers and duties.

(b) The Board may administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records in any investigation conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the Board for service in the same manner as process issued by any court of record. Any person who does not obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

- (1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.
- (2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.
- (3) A crime involving fraud or moral turpitude by conviction thereof.
- (4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.
- (5) False or misleading advertising.
- (6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- (7) Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars (\$5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also

impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with such probation.

(d) Any proceedings pertaining to or actions against a funeral establishment under this Article may be in addition to any proceedings or actions permitted by G.S. 90-210.25(d)(4). Any proceedings pertaining to or actions against a person licensed for funeral directing or funeral service may be in addition to any proceedings or actions permitted by G.S. 90-210.25 (e)(1) and (2).

(e) Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes.

(f) In determining the amount of any penalty imposed or assessed under Article 13 of Chapter 90 of the General Statutes, the Board shall consider:

- (1) The degree and extent of harm to the public health, safety, and welfare, or to property, or the potential for harm.
- (2) The duration and gravity of the violation.
- (3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.
- (4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.
- (5) The violator's prior disciplinary record with the Board.
- (6) Whether and the extent to which the violator profited by the violation. (1969, c. 187, s. 7; 1983, c. 657, s. 4; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, ss. 29, 30; 2001-294, s. 11; 2004-203, s. 7; 2007-531, s. 15.)

§ 90-210.70. Penalties.

(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be guilty of a felony. If the value of the preneed funeral funds is one hundred thousand dollars (\$100,000) or more, violation of this section is a Class C felony. If the value of the preneed funeral funds is less than one hundred thousand dollars (\$100,000), violation of this section is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked.

(b) Any person who willfully violates any other provision of this Article shall be guilty of a Class 1 misdemeanor. Each such violation shall constitute a separate offense and may be prosecuted individually.

(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided.

(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the

county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence that a felony has been committed by a licensee. The record of complaints, auditing, and enforcement shall be presented in an annual report from the Board to the General Assembly.

(e) Whenever it shall appear to the Board that any person, firm, or corporation has violated, threatens to violate, or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. (1969, c. 187, s. 8; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993 (Reg. Sess., 1994), c. 767, s. 28; 1997-399, ss. 31, 32; 1997-443, s. 19.25(o); 2003-420, s. 15.)

§ 90-210.71. Nonregulation of insurance sales.

The provisions of this Article do not regulate the issuance and sale of insurance policies, but apply only to the underlying preneed funeral contracts. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.72. Nonapplication to certain funeral contracts.

This Article does not apply to contracts for funeral services or merchandise sold as preneed burial insurance policies pursuant to Part 13 of Article 10 of Chapter 143B of the North Carolina General Statutes or to replacements or conversions of such policies pursuant to G.S. 143B-472.28. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.73. Not public record.

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes. (1997-399, s. 33.)

§§ 90-210.74 through 90-210.79. Reserved for future codification purposes.